

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 5803 of 1994

SMT REKHA GUPTA
V/S
JNV UNIVERSITY & ANR

Mr. ASHOK CHOUDHARY for Mr. M MRIDUL, for the appellant
/ petitioner

Mr. BABULAL DARJI for Mr. JM BHANDARI, Mr. KULDEEP
MATHUR, for the respondent

Date of Order : 4.4.2007

HON'BLE SHRI N P GUPTA, J.

ORDER

This petition has been filed by the petitioner on 19.12.94, against the University, and the associate professor. The allegations of the petition are, that the petitioner took admission in M. Phil examination, conducted by the respondent No.1, University. The examinations were due in July 1990, at which time respondent No.2 was head of department, since by then the courses had not been completed, 6 out of 7 students did not consider it appropriate that the examinations be held in July 1990, and a representation was prepared to be submitted. This activity of preparation of representation was not taken happily by the private respondent. However, the students did not agree to the counseling by the respondent No.2, and in this move, the petitioner alleges that, she was taking the leading part, and that on the representation being

made, the Vice Chancellor postponed the examinations to January 1991, the respondent No.2 took this as an affront, and nursed the grudge, not to pass the petitioner. With this background, it was alleged, that the petitioner secured 75%, 74% and 55% marks in Paper I, II and III respectively in the written examination, the dissertation was also required to be done, but since the respondent no. 2 did not have sufficient time, he referred the petitioner to Dr. N.S. Sandhu, however the petitioner also sought guidance from the private respondent in preparing dissertation. It is then alleged that after the dissertation was ready, and before it was decided to represent for postponing of the examination, it was shown to respondent No.2, who drafted a certificate, and gave it to the petitioner to get it typed, to be signed, for being included in the bound copy of the dissertation, and it was duly signed by respondent No.2. However, before it could be included in the dissertation binding, it was taken back by the private respondent, and some sentences were struck off therein, and one sentence was inserted. According to the petitioner, on completion of dissertation when she approached the respondent No.2 to give requisite certificate, certificate was given, and the dissertation was submitted for the needful. Later on, the petitioner moved application to Dy. Registrar for grant of some documents, and thereupon she came to know, that in the certificate, one sentence in the first para has been scored

out, the letter of the Dy. Registrar alongwith the copy of the certificate have been produced as Annex.2 and 3 respectively. In these circumstances, the respondent No.2 did not take steps to arrange viva voce. However, the petitioner's father did represent to the Vice Chancellor number of times, and then came to be issued a letter dated 21.4.91, informing, that once dissertation has been submitted, Supervisor cannot be changed, and if change is required, the student has to change the topic, and submit a fresh dissertation. Then at the direction of the Vice Chancellor the dissertation viva voce examination was fixed on 5th and 7th January 1993. After this, one Dr. K.S. Shekhawat, who by then had become Head of the Department, informed the Assistant Registrar, that petitioner's viva voce has been fixed on 10.1.94, for which the mark-sheet was received by the petitioner which has been annexed. It is alleged that from the mark-sheet it appears, that the petitioner secured 48% marks in dissertation, and 40% marks in viva voce. According to the petitioner, the dissertation is evaluated by two examiners, one being the Supervisor himself and other being the head of the department, and each gives mark out of 100, and it is average of the marks awarded by the two examiners, which are taken to be marks obtained by the candidate, and the same is true of viva voce examination, except that each examiner awards marks out of 50. It is then alleged, that the head of the department awarded 85 marks to dissertation, while the

respondent No.2 awarded only 11 marks, and that is how she was awarded 48 marks, while in viva voce, Dr. K.S. Shekhawat awarded 40 marks out of 50, and the respondent No.2 awarded zero marks, to the petitioner. It is alleged that after receipt of the mark-sheet, the petitioner made representation several times, but to no good. With these averments, the writ petition has been filed, alleging inter-alia, that the respondent No.2 has given marks as low as 11, in a calculated manner, taking care, that even if she scores highest marks, she will fail, and at the stage of viva voce, situation had become more surcharged, and therefore, the petitioner was awarded zero marks. Then it is alleged that it is difficult to believe, that a candidate securing such high percentage of marks in written examination would be able to get so low marks for dissertation, and thus, malafides are writ large. Inter-alia on these grounds, the prayer made is, that it be declared that the marks awarded to the petitioner in the dissertation and viva voce are illegal, and the University be directed to declare the petitioner to have passed, by doubling the marks awarded to her by the examiner, other than the respondent No.2. Other prayer made is, that it be declared, that the respondent No.2 is not worthy of being kept on the high academic office of Associate Professor, and this Court may direct his removal from the office forthwith. Thus, the whole long and short of the writ petition is, that the award of marks by respondent No.2 in

dissertation and viva voce examination is alleged to be outcome of malafides against the petitioner, and therefore, she has claimed marks to be awarded on the basis of the marks awarded by the head of the department, and to be declared as passed. So far as removal of respondent No.2 is concerned, now it is much too late in the day to dilate upon the relief, apart from the fact that during course of hearing no submission has been made in that regard.

A reply to this writ petition has been filed by respondent No.1 University. The stand taken therein is, that the examinations were to be held from 14th June 1990 onwards, and representation from the students was received on 25.5.90, and on that representation comments were sought from the respondent No.2, who had written, that the teachers of the department informed, that courses had been completed, yet he has no objection in postponement of the examination in the interest of the students. Then it is pleaded that the respondent No.2 was Supervisor to guide dissertation of the petitioner, making of representation made by the petitioner and his father was not disputed, and it was pleaded that in view of the provisions of Ordinance 372(12), the Supervisor once appointed shall not be changed, unless circumstances so warrant, and once candidate has already submitted dissertation, the Supervisor cannot be changed, and this order was communicated to the petitioner. Then regarding award of

marks, it was pleaded, that it is wrong to contend that the respondent No.2 awarded the marks as pleaded; rather both the examiners, being head of the department and the Supervisor, jointly awarded 40 marks. It was specifically pleaded, that it is wrong to contend, that the respondent No.2 awarded zero marks in viva voce examinations. Then in additional pleas, the provisions regarding evaluation of marks have been quoted.

This reply was filed on 28.11.95, to which a rejoinder was filed on 29.11.95, and the averment made about award of zero marks by the respondent No.2 was reiterated.

Then a reply was filed on behalf of the respondent No.2 as well, on 27.11.95, and the stand taken therein was, that agitation by the students is a routine phenomenon, and nothing personal was there against her, there was no cause of any animosity or revenge against the petitioner. It was also contended that in reply to the letter received from the Assistant Registrar, it was conveyed that though the curriculum has been completed, however, he has no objection in postponement of the examination. The allegation about unhappiness or threatening etc. on the side of the respondent No.2 was specifically denied. Then it was pleaded that the respondent No.2 did not have any malafide against the

petitioner, the changes happening in the language of certificate before a final draft was prepared, is a mere routine exercise, and the petitioner herself has admitted about the final preparation of the certificate. Then it is pleaded that the petitioner requested respondent No.2 to sign the certificate vide letter dated 7.10.91, and respondent No.2 immediately did the needful. Then it is pleaded that though lines have been scored out from the certificate, but there is no malafide intention, as the lines which were scored out only relate to the role of the respondent No.2, and did not relate to the personal performance of the petitioner. Then on merits, it was pleaded that the respondent No.2 came across the book named "Ratan Raso" written by Mahakavi Kumbh Karan Sandhu, and respondent No.2 was shocked to utter disbelieve, when he found that the material, which was produced before him to be checked as a guide, during writing of the dissertation, was a literal copy, with some minute changes, and translation. The respondent No.2 has produced two parts of both the texts of the dissertation.

To this reply again a rejoinder was filed. It was pleaded that submission is vague and is contrary to the contents of the certificate. Then certain pleadings were also taken about the effect of the stand taken in the reply, on the assessment of marks to be awarded, and it was sought to be pleaded, that by minor mistake, inverted

commas could not be put, as the dissertation is, after all, not an original research work, and is only result of research work. Then various other pleadings regarding malafide were taken, and it was maintained, that the award of marks is wrong, and is out come of malafide.

At this place, I may straightway refer to the legal position about the scope of interference in the writ jurisdiction, and in this regard refer to the judgment of the Hon'ble Supreme Court, in Pramod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission, Patna, reported in AIR 2004 SCW 4541, where the Hon'ble Supreme Court has held, that in absence of any provision in the rules for re-evaluation of answer books, no candidate would have right to seek re-evaluation of the answer book, and the order of the High Court directing re-evaluation of marks was held to be improper and not justified. It is a different story that in the writ petition, the petitioner herself has not claimed for re-evaluation, and has claimed a direction to be declared to have passed, simply by doubling the marks awarded by the head of the department, on the ground, that the marks awarded by respondent No.2 were out come of malafide.

From perusal of the pleadings mentioned above, it is clear, that there are allegations and counter allegations, or rather pleadings and controversions on the

aspect of malafide, and there is no material on the basis of which it could be assessed, as to whether the award of marks is out come of malafide. It appears, that in this background, when the matter came up before this Court for admission on 19.11.97, after show cause notice, this Court passed a detailed order, reminding its limitation in interfering in academic matters, including cases like this, and few judgments of Hon'ble the Supreme Court were referred, and then the Vice Chancellor was requested to consider, as to whether it is possible for him to appoint an independent examiner for her dissertation, to get it re-evaluated, and if it is not within his competence, refer the matter to the Academic Council or to any other competent body for the said purpose, and get it re-evaluated expeditiously. It was also directed, that in case no such course is feasible, the University is directed to give names and addresses of three professors from outside universities, who can be requested to examine her dissertation. Then on 11.12.97 it was recorded, that the counsel for the University has submitted a list of three examiners of outside Universities, who could examine the dissertation, and it was directed, that Registrar of University will send copy of dissertation alongwith copy of book "Ratan Raso" to anyone of the three examiners, with the request, that dissertation may be examined expeditiously, and examiner shall also be requested to make observation in respect of the allegations of the respondent

No.2, of copying from the book, tagged alongwith the dissertation. This was accordingly done, and on 19.7.2001, it was noticed that the report of the third examiner has been submitted by the University, and the third examiner has awarded marks below the required pass marks. Thereafter, the matter went in due course.

In my view, the contention of the petitioner about malafide is required to be considered, keeping in mind the above sequence of events, taking place after filing of the writ petition. I am inclined to construe, that the above action was taken by this Court from time to time, not for the purpose of re-evaluating the answer book (dissertation) of the petitioner, and obviously it could not be, in absence of any provision of law, but was got examined only for the purpose of ascertaining, as to whether the award of marks by the respondent No.2 is an out come of malafide, or the performance of the petitioner was poor, and in this regard I may refer to the report submitted by the third examiner. The examiner has reported that the respondent No.2 has at many places, not only marked by red ink, the portions copied, but even the reference wherefrom they have been copied have also been given, and has also quoted certain extracts, by observing, that the candidate has tried to show originality, and for that purpose, has translated certain portions, and in that process, has committed such mistakes, that the translations have also

gone wrong, and in that regard various illustrations have been quoted. Then certain other material and mistakes have also been pointed out, and has found, that the writer has also not read the proof correctly, and has left many mistakes. Then the examiner in the last line has observed, which observation appears to have been made with a heavy heart, when he has written, that in any case for the small dissertation, he can possibly not give any marks beyond 25.

Thus, it clearly shows, that the dissertation submitted by the petitioner was not of a standard, which could be awarded marks as claimed by the petitioner. In other words, it cannot be said, that the award of marks by the respondent No.2, on the dissertation, is on a lower side, being actuated by malafide. There may be bonafide mistakes, or error of assessment, while awarding the marks to some extent, as they are not like mathematical calculus, where the matter is about awarding marks in the dissertation, and therefore, a broad spectrum is required to be considered, as to whether the award of marks is so low, so as to conclude to be an out come of alleged malafide, which in the present case is not the case.

The net result of the aforesaid discussion is, that I do not find any force in the writ petition, and the same is, therefore, dismissed. The parties shall bear their own costs.

(N P GUPTA), J.

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